

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP - 9 2002
CLERK, U.S. DISTRICT COURT
By [Signature]
Deputy

FONDA DUSE,

Plaintiff,

vs.

CENTER OPERATING COMPANY,
L.P.,

Defendant.

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C.A. NO. 3-02CV-1023 H

**EMERGENCY MOTION FOR ORDER AUTHORIZING
THE PARTIES TO FILE DOCUMENTS UNDER SEAL**

Defendant Center Operating Company, L.P. ("COC") intends to file a Motion to Disqualify Plaintiff's Counsel, supported by a Brief and an Appendix. COC's Motion to Disqualify is based on the fact that Plaintiff's current legal counsel has secretly acquired privileged communications between COC and its legal counsel. The communication at issue was clearly marked "ATTORNEY/CLIENT PRIVILEGED DOCUMENT" and contains suggestions by COC's counsel for improving COC's policies and practices to assist it in preventing and defending against employment related lawsuits. These privileged communications were not produced by COC in any lawsuit, were not obtained through the discovery process and were identified by COC on a privileged log in a related lawsuit filed by Plaintiff's counsel on behalf of her other client, Cindee Mack.

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TO FILE DOCUMENTS UNDER SEAL – Page 1**

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Without notifying COC's counsel that she obtained a copy of the privileged communication through unidentified sources, Plaintiff's counsel actively used this material to assist her in preparing Mack's case against COC. Shortly after learning that Patrick possessed the privileged communication, COC filed a Motion to Disqualify Plaintiff's Counsel in the *Mack* lawsuit.¹ The Motion to Disqualify is pending in Judge Buchmeyer's Court and all proceedings in the *Mack* lawsuit have been stayed until the Court rules on the Motion to Disqualify.

Given Plaintiff's counsel reviewed and digested COC's privileged communications, disqualification is the only remedy to protect the privilege. Because the documents at issue are attorney/client privileged communications, COC seeks an Order of this Court authorizing it to file its Brief in Support of its Motion to Disqualify and those privileged portions of its Appendix under seal. COC's Brief contains argument that references privileged information and the Appendix contains the privileged communications for the Court's use in analyzing Defendant's Motion to Disqualify. Moreover, given Plaintiff's counsel will likely respond in opposition to Defendant's Motion to Disqualify, Defendant seeks this Court's Order to allow either party to file under seal any portion of their motion, brief or appendix that includes information from the privileged communications or otherwise reveals the contents thereof.

WHEREFORE, Defendant Center Operating Company, L.P. requests this Court to enter an order authorizing the parties to file documents relating to Defendant's Motion to Disqualify under seal as necessary to prevent disclosure of COC's privileged communications or the contents of the privileged communications.

¹ The related lawsuit is styled *Cindee Mack v. Center Operating Company, L.P.*, in the United States District Court for the Northern District of Texas, Dallas Division, Cause No. 3:01-CV-2125-R.

Respectfully submitted,



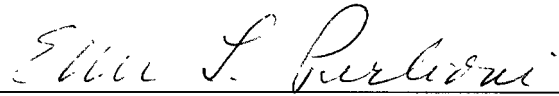
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**ATTORNEYS FOR DEFENDANT
CENTER OPERATING COMPANY, L.P.**

CERTIFICATE OF CONFERENCE

This is to certify that I exchanged correspondence with Plaintiff's counsel regarding the contents of this motion. Plaintiff opposes this motion.



Ellen L. Perlioni

EMERGENCY MOTION FOR ORDER AUTHORIZING THE PARTIES

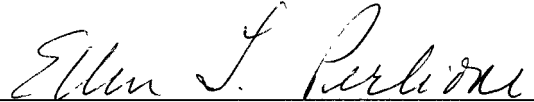
TO FILE DOCUMENTS UNDER SEAL – Page 3

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2002, a true and correct copy of the foregoing was sent to Plaintiff's counsel as addressed below, via fax and certified mail, return receipt requested.

Katrina Patrick
5177 Richmond Avenue
Suite 1275
Houston, TX 77056



M. Scott McDonald
Ellen L. Perlioni
Brian D. Johnston